IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7627 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYSUKHLAL D PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7627 of 1991
MR DHIRENDRA MEHTA for Petitioner No. 1
MR SIRAJ GORI, AGP. for Respondent No. 1-2
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This petition is filed under Article 226 of the Constitution. The petitioner who is running a Video center at village Lalpur in Jamnagar district has challenged the orders of the authorities under the Gujarat Entertainment Tax Act,1977 making best judgment assessment under Section 9 of the said Act as confirmed in appeal and revision by the higher authorities.

2 The petitioner was granted licence to run Video center on 11/10/1987 with the sitting capacity of 20 spectators and the petitioner was to pay consolidated entertainment tax on that basis. The petitioner was served with a show cause notice dated 4/2/1988 (Annexure-A) in connection with the alleged irregularities which were found at the time of inspection on 10/1/1988 that the petitioner had in the show between 3.00 p.m. to 6.00 p.m. admitted as many as 83 spectators as against the sanctioned capacity of 20 seats of spectators. The petitioner had thus admitted 63 more spectators and had evaded payment of entertainment tax for 63 spectators per show for two shows every day from 11/10/1987 till 10/1/1988 at the rate of Rs.3/- per spectator per show aggregating to an amount of Rs.34,020/-. The petitioner denied the allegation in his reply. After considering the same the Designated Officer & Mamlatdar, Lalpur passed an order dated 23/5/1988 (Annexure-B) rejecting the petitioner's defence and confirming the demand of Rs.34,020/- by levying entertainment tax @ Rs.3/- per spectator per show for 180 shows i.e. 91 days from 11/10/1987 to 10/1/1988 Rs.3/from 63 excess spectators admitted to the Video center over and above the sanctioned capacity. The petitioner's appeal was allowed by the Entertainment Tax Collector by order dated 21/08/1989 on the ground that the Mamlatdar had not properly considered the defence urged by the appellant. After remand also the Mamlatdar came to the same conclusion and passed order dated 29/12/1989 (Annexure-D) confirming the demand of Rs.34,020/-. The petitioner's appeal came to be dismissed by the Entertainment Tax Collector by his order dated 25/11/1990 (Annexure-E). Aggrieved by the aforesaid order of the appellate authority, the petitioner carried the matter in revision before Entertainment Tax Commissioner who also dismissed revision by impugned order dated 4/6/1991 (Annexure-H). The petitioner was therefore served with a recovery notice dated 1/7/1991 (Annexure-I). Hence, the present

petition.

3 At the time of filing the revision, the petitioner was required to deposit Rs.6,800/- which direction the petitioner had complied with on 22/3/1991 and thereafter at the time of admission of this petition also the petitioner was required to deposit another sum of Rs.15,000/- as per order dated 18/10/1991. Mr.D.K.Mehta, learned Advocate for the petitioner states that the said interim order was also complied with.

4 At the time of hearing of this petition Mr.D.K.Mehta, learned Advocate for the petitioner has submitted that after the petitioner started running Video center on 11/10/1987, there was inspection by the Entertainment Tax Inspector on 30/11/1987 and he found everything in order and endorsement to that effect was also made in the visit book and in the relevant register hence, the authority could not have made any best judgment assessment for the period upto 30/11/1987. Secondly, it is submitted that even for the period from 1/12/1987 to 10/1/1988, even while denying that the petitioner had admitted 63 spectators more than the sanctioned capacity at the time of inspection on 10/1/1988, assuming that in one particular show 63 more spectators were admitted it would not mean that on all the days i.e. from 1/12/1987 to 10/1/1988 for 41 days for two shows every day i.e. in each of 82 shows the petitioner had admitted 63 more spectators than the sanctioned capacity of 20. It is further submitted that even while making reference to the inspection visit of the petitioner Video center on 7/10/1988, the Entertainment Tax Commissioner has merely stated that more spectators were found on that day also, but no number is given. If the number of spectators found on 7/10/1988 in excess was as much as 63, the authority would have referred to such number.

5 On the other hand, Mr.Gori,learned Assistant Government Pleader opposed the petition and submitted that when the Inspector found 83 spectators as against sanctioned capacity of 20 on the date of inspection i.e. 10/1/1988, the authorities were justified in making the best judgment assessment.

6 We find considerable substance in the submission made by Mr.Mehta for the petitioner on both the counts. When the Inspector had made surprise visit on 30/11/1987 he found everything in order and also made endorsement to that effect in the Visit book and also in the relevant register. The authorities were therefore not justified

in overlooking the above facts and making best judgment assessment for the period from 11/10/1987 to 30/11/1987. As regards the assessment for the period from 1/12/1987 to 10/1/1988 it is true that since the Inspector had found 63 spectators more than the sanctioned capacity of 20 in one show, the authorities were justified in making best judgment assessment for the period from 1/12/1987 to 10/1/1988. Even so, the authorities have not given any reason to support the inference that on all 41 days twice a day the petitioner would have admitted 63 more spectators than the sanctioned capacity. In view of the fact that the Entertainment Tax Commissioner has referred to the another surprise visit on 7/10/1988 without indicating the number of excess spectators, there is reason to believe that the number of spectators was not to such a large extent on all the days. The impugned orders are, therefore, required to be quashed and set aside. Ordinarily, the matter would be required to be remanded to the authorities. However, considering the facts that the incident in question took place in the year 1988 and the matter is pending for last 12 years the interests of justice would be served, if appropriate orders are passed by this Court.

6. After hearing the learned Advocates for the parties, we are of the view that the interests of justice would be served if the number of spectators to be taken as excess in each show on the relevant days would be 40 per show per day in excess of the sitting capacity for the period from 1/12/1987 to 10/1/1988 i.e. for two shows per day for 41 days multiplied by 40 spectators i.e. 3280 multiplied by entertainment tax of Rs.3/which would come to Rs.9840.

7. The petition is accordingly partly allowed and the impugned orders at Annexures D,E & H are modified by reducing the amount of entertainment tax from Rs.34,020/to 9840/-. The excess amount deposited by the petitioner shall be refunded to the petitioner within one month from the date of the receipt of the writ of this Court or a certified copy of this order, whichever is earlier. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S.Shah,J)

(D.A.Mehta,J)
m.m.bhatt